

SPEECH

OF

JOSEPH R. INGERSOLL,

ON

THE OREGON BILL:

DELIVERED

IN THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES,

APRIL 16, 1846.



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## SPEECH.

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The Oregon Bill being under consideration, Mr. J. R. INGERSOLL rose and addressed the House as follows:

The measure now proposed has in view an exclusive exercise of power and possession of land in Oregon. It designates the place which is to be governed and occupied by no particular name, and it describes it by no precise limits. It extends jurisdiction, and the incidents of jurisdiction generally, over *all that portion of the territory of the United States which lies west of the Rocky Mountains*. I object (said Mr. INGERSOLL) to this language as too indefinite. It begs the question of ownership, which has been in a state of fruitless controversy for nearly thirty years; and it exposes to endless dispute, and ever-varying construction, a law which ought to be, as the title is claimed to be, clear and unquestionable. The professed object is to protect the rights of American settlers. Settlement implies the existence of something to be occupied. It is essential to proper legislation, that the object of it should be fully ascertained and distinctly communicated.

The language which I have quoted from the bill is not only indefinite, but equivocal. I impute of course no improper design to the committee, much less to the member of it who reported the bill; but the terms are deceptive. They are calculated to mislead, by creating a belief that the rights of settlers will be measured according to the notion which each individual entertains respecting them. There are many opinions as to the extent and position of the territory of the United States west of the Rocky Mountains. No less than three very recent European publications on the subject of Oregon are now before me. Two of them are from the English press, and one (*Question de l'Orégon, par le Major G. T. Poussin*) from that of Paris. While Dr. Twiss and Mr. Wallace would contest with us all territorial rights, strictly speaking, admitting only a concurrent initiate claim, and Major Poussin would, with some of our immediate friends, recommend a divided possession, not a few writers and speakers among us insist upon an incontestable title to the whole ground from 42° to 54° 40'. The doubtful language of the bill might apply to any one of these contingencies. In the application of it, however, great confusion would arise, and with every new occasion a new rule of interpretation might be introduced. When all the original elements of title are combined, and discovery, exploration, occupation, and settlement, shall have left nothing to complete it but the assertion and exercise of eminent domain, there will be little doubt of the sufficiency of the terms which are used. But the sturdiest friend of Oregon must admit that, in the broad surface of more than twelve degrees of latitude, at the best, various stages of advancement may be found; and while in some places settlements are practicable, and admit of protection, by many times the larger part is in the merest state of unexplored nature, and will so remain for ages. Other portions are held by subjects of another Government,

who may prefer to receive protection from a source to which they acknowledge themselves to owe a corresponding allegiance. If the sweeping clause which has been selected be intended to embrace the whole with indiscriminating and impracticable benevolence, it might find less favor than a provision which should cover such objects only as are clearly entitled to our care. Let them be distinctly avowed, and there will at least be no voting in the dark. The bill which was reported some time ago, and afterwards withdrawn, candidly made known its pretensions by metes and bounds. This substitute resembles it in all respects, except the provision for notice, which has now become unnecessary, because it has met with independent support, and except that it conceals the precise character of a purpose which has heretofore been manfully proclaimed. Legislative language, notwithstanding the utmost care, will sometimes be exposed to doubt and difficulty, when it comes to be applied to use. Statutes are often found to be obscure in practice, however cautiously they may have been prepared. To render them so purposely in their formation would be to use a leaf from the precepts of that veteran diplomatist who said that language was made to conceal our thoughts; or to adopt the idea of another master in the same school, who once wrote to his Government from the Hague, that a certain Russian minister had fallen into an error, common to men of weak understanding, in believing that things were in reality what they seemed to be.

It has been supposed that the measure contemplated has one or more precedents in the British statute book, where enactments are found for regulating the fur trade, and establishing criminal and civil jurisdiction in certain parts of North America. I ventured to suggest a day or two since that there was some mistake in this, and I beg leave to say a few words in relation to it here. Certain well-known elementary rules for the construction of statutes will show that these acts of Parliament are no justification for this proceeding. The mischief that existed, and the remedy that was provided, furnish a guide to the true construction of them. In those wild regions which skirt the British provinces, agents of rival British companies found an arena for a series of violent conflicts. Every kind of disorder was practised with impunity. The Indian territories, as they were called, became an abode of outlaws, who were, nevertheless, British subjects, beyond the pale of British control. The whole scope of the effort of the Government was to correct this evil. It did not contemplate an interference with the land. It did not look to the citizens or subjects of any other nation. It merely designed to extend the jurisdiction of the realm over those who had made themselves independent of it, without becoming subject to any other restraint, and who lived in the free indulgence of unbridled passions, aggravated by rival interests and the lust of gain. During the war with this country these feuds were permitted to flourish. Soon after peace was restored, attention was anxiously directed to them. Sir John Sherbrook, Governor General of the Canadas, issued his proclamation on the 3d of May, 1817. This paper asserts the existence of breaches of the peace, and acts of force and violence, of conspiracies, unlawful assemblies, riots, affrays, and murders. It imputes them all to contentions between certain merchants carrying on trade in the Indian territories under the names of the Hudson's Bay Company and Northwest Company. It announces its purpose to restrain these offences, and to bring to condign punishment the perpetrators; and it constitutes



civil magistrates, and justices of the peace, and special commissioners, to discover and apprehend the criminals, to repress and discourage crimes, and to maintain and preserve the peace and the laws.

This proclamation was followed up by the act of Parliament of July, 2, 1821, which is the principal subject of objection. We have seen the mischief which existed, the remedy contemplated, and the persons to whom that remedy was to apply. The spirit and meaning of the law look to British subjects, and to them alone. The subject-matter is their lawless condition—the effects and consequences are punishments of a well-known class of persons. The rules thus furnished would lead us so to interpret a highly penal law that it will not involve a breach of international comity. We need not provoke our own judgments to an exercise of the powers of construction. It has been done to our hand by the most conclusive, I would say in relation to the subject, by the highest authority. During the negotiations of 1826–'27, Mr. Gallatin brought this statute to the attention of the British Government, and received the most satisfactory evidence of the absolute and rigid limitation of it to the subjects of the Power which passed the law. In his despatch of the 7th August, 1827, he writes thus to Mr. Clay from London: “The British Plenipotentiaries did not admit that the act of Parliament of July, 1821, was susceptible of the strict literal construction I had put upon it. They declared, explicitly, that it had no other object but the maintenance of order amongst British subjects, and had never been intended to apply to citizens of the United States. That such was not the intention of Great Britain was evident from the various proposals now made on her part, having all for their object to prevent both parties from assuming an exclusive jurisdiction.” They who would have been pirates if they were on the seas, and subject to punishment notwithstanding the freedom from all especial jurisdiction of the element on which they sailed, merely ceased to be outlaws on land by the necessary restraints and penalties of legislation, without any assertion of eminent domain. Indeed, the statute contains a special reservation in favor of American citizens. This has been supposed to apply only to trade with the Indians; but it is coextensive with the purposes of the act. It recognises the treaty as an existing and a paramount law; and it could not, without destroying its obvious intent, be limited except by the terms of the treaty itself. Were it otherwise, another treaty, made half a dozen years afterwards, and simply prolonging indefinitely the operation of the first, has superseded the statute, and has become once more a supreme law.

To this moment, and at all times, the British Government have disclaimed all such pretensions as have been alleged to be manifested in their written law. The statement annexed to the protocol of the sixth conference by Mr. Huskisson and Mr. Addington, British Plenipotentiaries, in the negotiation of 1826–'27, in reference to Oregon, asserts that “Great Britain claims no exclusive sovereignty over any portion of that territory. Her present claim,” it proceeds, “not in respect to any part, but to the whole, is limited to a right of joint occupancy in common with other States, leaving the right of exclusive dominion in abeyance.” Mr. Pakenham, in his argument of July 29, 1845, without asserting any thing like absolute sovereignty, endeavors merely to prove that “the position of Great Britain in regard to her claim, whether to the whole or to any particular portion of the Oregon territory, is at least as good as that of the United States.” Prudence has been shown in the course of successive negotiations, by ab-

staining from the assertion of *title*, and giving to the pretensions of Great Britain a lowlier but not less ambitious name. They have been prudently called her claims. Title is too lofty a term to be correctly used by either of the parties litigant. It implies what cannot justly be said in relation to any holder of rights like these. The object itself is not in a condition for proprietary ownership. Nearly the whole of it is one broad expanse of wild land, savage rocks, and dreary streams. In 1828, an early movement was made towards its occupation by citizens of the United States, who prayed the aid of Congress in a memorial, in which they characterized it all as wilderness. As to settlements, which your bill designs to protect as matter of right, I fear we should stand on unequal ground with our competitor, both in the priority and number of them. From 1813 to 1823, we learn from Mr. Greenhow, few if any citizens of the United States entered the countries west of the Rocky Mountains. (Page 356.) The first of these colonies, he informs us, was founded in 1834. (Page 360.) Mr. Wallace, on the other hand, names the year 1806 as "the era of the commencement of the first fixed methodical and continuous occupation of the country; the first actual use made of it; the first regularly conducted attempt to develop its natural resources."

This writer enumerates eighteen different establishments under the name of forts, from Fort Citrille to Fort Vancouver, some of which are headquarters for hunting parties in the service of the Hudson's Bay Company, besides a village of fifty-three houses, "and the Vancouver farm, stretching up and down the river—3,000 acres, fenced into beautiful fields, and sprinkled with dairy houses and herdsman's and shepherd's cottages." There are spots of verdure in the extended deserts of Arabia; but they are so thinly scattered over the almost immeasurable vast, that the exhausted traveller often sinks before he can reach their refreshing atmosphere.

I hope to say more of this subject of title, or rather of relative right of occupation, before I take my seat. It is necessary now to turn to the particular merits of the bill before us, and its co-ordinate evils. We are discussing the *second* in a long list of disastrous circumstances, of which notice to terminate the treaty of joint occupancy was the *first*. That first step, if in an evil hour it shall be adopted, will prove the costing step in a progression of incidents which can bring with them nothing but calamity. Besides the innate importance of the thing itself, it derives infinite moment from its position in the front of a series of events that threaten in inevitable succession to follow it—events that will be recollected for ages. While individual differences, not strictly and in all instances confined to party lines, have distinguished the course of Congressional proceedings on these interesting topics, principles of separation are not less marked and obvious than personal differences of opinion. Opposite conclusions are drawn from premises not seemingly dissimilar. The one great leading measure which still hangs in threatening augury above our heads is, in the declared judgment of those who urge it, of pressing necessity, and of no threatening aspect; while it is regarded by its opponents as quite unnecessary in itself, and fraught with disastrous consequences. Let gentlemen who so warmly insist upon giving the stern notice of a determination to renounce an arrangement which has preserved harmony in the particular region for nearly thirty years deceive themselves as to the true character of the proceeding as they may, they may depend upon it they are assuming the attitude



without the armor, and they are unfurling the banner without providing the men or the materiel of war.

The advocates of "notice" and its incidents complain of what they are pleased to call a war cry, and insist that it should be separated from the argument. They forget that it is part of the essential question itself. If the tendency of a proceeding is to provoke or produce unnecessary war, it would be difficult to conceive a more forcible objection to it. Deprive the proposition of this effect, and it loses half of its enormity. It may remain idle and unnecessary still, but its primary and most pernicious attributes are taken from it. For the very reason that notice is the prelude to hostilities, the casting of the herald's spear, it is to be avoided. You are the master of your own actions, but not of those of others. Events that are to react upon your movements are beyond the reach of your control. You cannot imbue them with the influence of desires or expectations that you may chance to entertain, by fanciful predictions of a supposed reluctance from abroad, much less by crying out peace, peace, when there is no peace. When Lord Suffolk, in the British House of Peers, proposed the employment of Indian allies in the war with our fathers—the employment, as Lord Chatham termed it, of the "cannibal savage, thirsting for blood, torturing, murdering, devouring, drinking the blood of his mangled victims"—it was all in the name of religion and humanity! Nor is it by any standard of judgment or justice which may be adopted here, that the course of conduct of a foreign nation is to be regulated. That foreign nation will probably determine and act for herself at her own pleasure, and as she has done sometimes heretofore, in strange departure, perhaps, from our well-founded notions of propriety. Who would have thought, according to the confident predictions of the present time, that she would, in former days, have continued to impress seamen and confiscate property alike protected by the ægis of our flag, for the purpose of supporting her own navy and of retaliating upon another ruthless belligerent? Yet she persisted in impressments and proclamations of blockade, at the peril of the commission of injustice, disregarding complaints and remonstrances, violating established principles of international law, and in the face of threatened and actual war. She chose in preference, and in pursuance of the dictates of a hostile spirit towards her historical enemy, to forego many advantages of commerce, and some of friendship and respect. Let it be borne in mind, that the former war ended with the causes that produced it. The contending parties sheathed their swords for lack of argument. If another is to ensue, no length of continuance, no change of circumstances, can change the differences in which it will have originated. These will remain indelibly marked upon the earth, as long as the Rocky Mountains shall rear their lofty heads above the clouds in proud observance of them.

Your own historian, the author of an authentic work on Oregon, which was prepared under the auspices of one branch of the Government, and has received the sanction of another, discusses this point of giving notice in the abstract, and when the whole question was free from much of the irritation that now surrounds it. In his book (page 390) he observes, that "such a notice can only be regarded as the announcement of the determination of the party giving it, to take forcible possession at the end of the term." It was argued not long since on this floor, that, because the act of giving notice was a war measure, it should emanate from Congress—with that body being deposited, by the Constitution, the high responsibility of declaring war.

Even now, there are two modes of attaining the object professedly aimed at—the abrogation of the convention. The one, as it appears, full of dire omen and portentous rage, with gauntlet hurled and lance in rest—that is, notice—defying, inexorable, force-announcing notice! The other bears in its right hand gentle peace. It proposes that, as the treaty began in amicable negotiation, so in amicable negotiation it shall end. It is not intended to be argued here, that either course is necessary or expedient, unless it be, by the latter expedient, to open anew the way to final settlement, which ought never to have been closed; the opening of which, by direct and frank proposal, seems to be embarrassing to the plenipotentiaries themselves. Except for this, both had better be omitted. But if you are bent upon the accomplishment of a particular end—the abrogation of the treaty; and if, also, you believe and declare that you design, in abrogating it, nothing else than peace, do it in a manner that may not either be misunderstood or misapplied: *do it peacefully, if you design it peaceably.*

That treaty has been well designated in former times, just as it is now, a treaty of joint occupation. I should be sorry to relinquish for it that character. Give up that, and your antagonist stands on vantage ground. If his numerous posts—some of them strong and extensive—are not harmless by consent, as establishments contemplated by the treaty, they are settlements of defiance and opposition, which may have derived strength from time and independent existence. They may create new elements of trouble, which the provisions of joint occupancy are calculated effectually to prevent. Mr. Gallatin uniformly thus denominated it; so does Mr. Buchanan. It was offered, protocolled, accepted, acted on, and has always been treated as such. Its language admits of no other interpretation. Good faith would forbid a departure, now, from its long understood nature and name, even if policy suggested (as it clearly does not) a change. Notice of the termination of this agreement is urged—uncompromising, one-sided notice—with no consultation of the convenience of the other party; with no deference for the ordinary rules of courtesy, merely because the treaty provides for it as a *dernier resort*, in the possible failure of other means, as furnishing, in any event, a reserved right, to a certain extent, in either party, if other opportunities should be foreclosed. Between individuals, what is the course of conduct on occasions of strict analogy? The law gives a right to distrain when rent is in arrear: Does a landlord, therefore, seize at once the household goods of a thriving tenant? Does the lender of a sum of money, for an indefinite period, to a friend, send the sheriff to arrest him within four-and twenty hours of the time of loan? These are rights—perfect rights; but they would not be exercised in a community that is fit to live in. Notice is of the same character. No principle of law is better established than this: “*Summum jus summa injuria.*” A stipulation for notice was intended for such a state of things as now exists with Mexico: when no minister residing at either Court, and formal negotiation being necessarily suspended, an arrangement, such as that with England respecting Oregon, could be terminated only by one-sided notice. As things are, it would wear a hostile aspect, and have a hostile effect, even if it stood alone; for it would announce a peremptory determination (and nothing else) to take exclusive possession, and exercise exclusive jurisdiction, when the barriers of the treaty should be broken down. But coupled, as it is too manifestly intended to be, with other unerring signs, either simultaneous in origin, or composing a series of consecutive acts of legislation, all of them parts of



one consistent and uniform system, it can lead only to a belligerent result. Ask impartial persons, who are not in the vortex of dissenting judgment into which we are plunged; inquire of the lookers-on here in Vienna, friendly representatives of foreign States; consult *any* unbiased minds, and see if they will not pronounce your notice a measure of incipient hostility. Thus, in the existing crisis, there are but two parties to the Oregon question—a peace party and a war party. All other points of difference are at least postponed. The measures at once desired or deprecated, advocated or condemned, have one only tendency—and that is, downwards, towards war. Like the *descensus Averni*, it is perhaps the easiest, and, in its very excitement, is not without attraction; but the step, once taken, may be fatal and irrevocable. To return from it will be difficult, if not impracticable. Whether the final and fatal result is the rather to be dreaded or despised, is not the point of immediate inquiry. Is that result fairly and naturally probable? Such is the question we propose, and which we desire should be met.

The discussion is supposed to be unduly embarrassed by appeals to the very tendency to which I have adverted. Such a tendency is of course reluctantly admitted by those who maintain the side of the argument to which it necessarily belongs. The mind instinctively revolts from consequences so painful, and denies that they are the corollary of a favorite proposition. In the mere abstract, few men avow themselves the advocates of war. Sometimes a curse, generally a crime, and always a calamity, they who defend it seek for palliation in supposed injuries beyond endurance, or palpable rights withheld, or other necessary inducements, which are in the particular instance deemed too powerful to be withstood. At the best, it is a reproach to civilized society, a relic of barbarism, a return for the occasion to habits of savage life, where, unrestrained by disciplined reason, it exists between man and man, as it does between the beasts that perish. Two of the bravest men and best soldiers known to history entertained, more than two centuries ago, an honest hope that by a general arrangement among nations it might be obviated. These gallant spirits were Henry IV of France and his wise minister the Duc de Sully. The death of Queen Elizabeth probably prevented a fair experiment from being made. War has sometimes, indeed, seemingly redeeming qualities, which give to it a temptation, in spite of all its deformities. Power and pride and glory and heroism and conquest and renown, gather together in rich and glittering array, to crown the head of cruelty, and to clothe with garlands the gory limbs of sin and death. "The battle of the warrior," says the book of inspiration, "is always with confused noise and with garments dyed in blood." Calamity, crime, and curse—war has existed from the earliest periods of society, as a necessary evil. Utopian would be the policy that should hope at all times to dispense with it. Wisdom consists in regarding it as a remedy for otherwise helpless maladies alone, as the forlorn hope of exhausted and baffled argument—literally as the *ultima ratio gentium*. A wanton adoption of it, or of measures which, through however long a chain of connected and dependent circumstances, lead finally to the same result, would disgrace a virtuous people and an enlightened age.

For what purpose are this notice and its incidents designed? To accelerate adjustment? We are told, officially, that conference is at an end. To change the present relations of the country as respects occupation of the debatable ground? They may be changed in a moment by negotia-

tion. To give renewed life to a slumbering correspondence? It may be done at once by answering to the point the last letter of the British Plenipotentiary, which has never yet been done, and still is due. The first error in the negotiation was not on our side. It consisted of the abrupt rejection by the British Plenipotentiary of an offer which, if not acceptable, might have been modified. After this peremptory and somewhat uncourteous refusal, it might well become a great nation formally to signify a desire that the proposition might be renewed. It has been manifested from high places that the rejection, and the manner of it, were not approved. The Sovereign herself has declared from her throne that no effort consistent with national honor shall be wanting on her part "to bring this question to an early and peaceful termination." Her representative in the House of Commons and the leader of the popular party have united in expressions of regret for the act of their Minister. After this virtual disclaimer, it might scarcely less well become another great nation formally to renew the offer. Where real magnanimity prevails, no mere principle of etiquette should be allowed to interfere with the high interests and the higher duty of nations. These are not the objects; if they were, they might be without circuitry attained. What then? Notice is designed not to unfetter negotiation—it would chain it up—but simply as a prelude to exclusive possession of territory now jointly occupied; to be taken, because we choose to take it, in our own way. Notice has never been thought of as a measure to stand alone. When at the last session of Congress it found its way into initiate legislation, it was as an amendment to a bill for the immediate exercise of exclusive jurisdiction over the whole ground. Twice has this extreme effort of absolute control made its way half through Congress—at first in 1843, when the Senate blew the blast of war, and the redeeming spirit of peace providentially breathed here; and once when we in turn adopted the perilous enactment, and the onward surge which it created was stayed at the other end of the Capitol. We have strangely changed our minds. It was my honored friend from Massachusetts, now not reluctant for extreme measures, who reported against the Senate bill. It was his successor in the place of chairman of the Committee of Foreign Affairs who reported against a resolution of similar import, which was introduced by a gentleman now before me from Indiana.

What is the purport of the present bill? It extends Iowa jurisdiction over the whole territory which is in dispute, and it reserves to the subjects of Great Britain the rights and privileges secured by the third article of the treaty of 1818 and that of 1827, only "*until* said treaty stipulation shall cease by virtue of the notice provided for in the second article," and no longer. It thus assumes Oregon for our own—enforces at once, by threat of arms, and after the brief period of a few short months, in rigorous exercise, at the point of the bayonet, the laws of the Republic over every inch of land and every living soul; proposes grants, with unsparing spirit, by hundreds of fair acres, as temptations to settlers; assumes absolute control over trade and intercourse with all the Indian tribes; organizes and equips a military force; and lays down a mail route from St. Joseph's, Missouri, to the mouth of the Columbia river. It extirpates from the face of the Oregon earth the British race and name, and it plants the standard of liberty and the Union, in proud and uncompromising supremacy, on every rocky eminence.



Our question is not whether Great Britain *ought* to acquiesce in this high-handed course, but whether, in the fair estimate of probabilities, she *will*. Remember, you have already offered her one-half, and she has refused it with disdain. Do you seriously believe that she will content herself with none? Will her desires, which even six belts of latitude cannot satisfy, be satiated with less than the measure of a grave? The leaves of the Sybil acquired new value in the eye of their possessor as they were reduced in number. You have by your own act persuaded England to believe that she ought to indulge some hopes,—that she has more than the shadow of a shade. You have repeatedly, in times past and present, proposed to give her barely less than she was willing to receive. By what scale of reason or philosophy is her expected satisfaction in the future to be measured? She asked you for bread; you offered to share with her your loaf, and she has cast it in an angry spirit away. She again asks you for bread; you give her a stone, and you believe she will receive it, if not with gratitude, at least without a frown! It is gravely argued on this floor, that your notice shall be given, and that, at the expiration of the term assigned by it, forcible possession shall be taken of every inch of the disputed ground; and yet that there will be no war! A powerful nation, armed to the teeth, her banners fanned for ages by conquest's crimson wing, not distinguished for the patience of her temper or her tender love for these United States, will stand tamely by and patiently behold her cherished settlements assailed and scattered; her time-honored charters violated and trampled in the dust; her subjects dragged before foreign magistrates and condemned by foreign laws; their property confiscated, their persons imprisoned, their lives perhaps sacrificed! If, in the wide-reaching and sagacious policy of that deep seated throne, there be one circumstance to which it clings with more tenacity than all the rest, it is the tender, ardent zeal, the maternal affection, with which it watches over, protects, and cherishes the children of the realm, in every quarter and corner of the globe. This never-ceasing care is the incentive to patriotism and the reward of loyalty. Time cannot enfeeble it, or distance diminish its freshness or its fervor, or circumstances rob it of a particle of its reciprocal attractiveness and charms. It warms the liege bosom in the frozen regions of Labrador, and it gives new vigor to the sinews under the burning sun of either India, as well as in the giant metropolis of the Insular domain. I am a Roman citizen, was a cry, the neglect of which brought on the ruin of a powerful Sicilian prætor, and drove him into perpetual exile. I am a Roman citizen, was an exclamation which ascended with the loftiest flights of the eloquence of Cicero. A similar appeal from the liegemen of England is not inaudible, if uttered at the extremity of the diameter of the earth; it would thrill and vibrate in every pulse and nerve of the vast body politic; it would be heard and responded to, from the shores of the Pacific, at the heart and centre of the empire; and all that accumulated wealth, which is the wonder of the world, and all those burnished arms, which have never failed to glitter whenever the pride of the nation has bidden their approach, for disaster, for victory, or for defeat, in the fens of Walcheren, or on the field of Waterloo, or on the banks of the Mississippi, or the frozen hills of India, would be put in requisition for the rescue. The colonial policy of England, her vital prosperity, her existence as a nation, are involved in the issue, and it would be madness to suppose that these essential purposes would now for the first time be overlooked or forgotten. You are leading off blindfold a torch dance



in the midst of combustibles, and trusting to accident that they will not take fire, when you act and argue as is proposed.

What is the object for which these risks are to be unnecessarily run? I say nothing of the prospect of easy and almost imperceptible acquisition, in the natural course of things; or of the facility of accomplishing all that can be immediately wanted, by giving laws to your own citizens, controlling the evil tendencies of savage tribes, and rendering more easy the access and the intercourse of travellers. These are fair and unexceptionable expedients. They are suggested in the annual message of the President, and they are far short of the measures now proposed. But let us see in the first place, and during the progress of the experiment, whether Oregon be worth the vexation it is giving birth to, whether this land of promise does indeed flow with milk and honey. Of extent sufficient to tempt the appetite of a nation like Ireland or Switzerland, or China or Hindostan, nations that have people beyond subsistence or ground for them to till, where a sterner and more cruel infanticide obviates the stern necessity of emigration, or where emigration supplies a remedy which infanticide affords elsewhere; more than three times as large, we have been told, as all the surface of the British islands, and nearly or quite equal to our thirteen original States in extent; not, however, in extent desirable, because not needful to a people yet supplied with land beyond the wants of centuries; not calculated in reason to tempt the sober agriculturist from the prairies of the less distant West, from which the journey of a family to Oregon would cost the price of a farm. In every other particular a country one would think not so desirable as to fix the footsteps of the wanderer, or attract the movement of the steady and settled occupant of a distant region. Nature has seemed to assign barriers so definite as to mark the place as one of peculiar isolation for itself, and to forbid easy access to it from the rest of the world. Not one navigable river, if geography is to be credited, intersects its rugged precipices or inhospitable plains.

Recent and authentic accounts represent the whole country as so intersected by ranges of lofty mountains, that the climate is generally severe, and only a small portion of the land is susceptible of cultivation. Your main quarrel is now about the use of the Columbia river, as that succession of shoots and cataracts is called. "The banks of the Upper Columbia," says Captain Wilkes, "are altogether devoid of any alluvial flats, destitute of even scattered trees; there is no freshness in the little vegetation on its borders, the sterile sands reach to its very brink; it is scarcely to be believed until its banks are reached that a mighty river is rolling its waters past these arid wastes." At its mouth nature denies an entrance during eight months of the year, and at all seasons renders it so difficult and dangerous that in one fatal attempt made by naval skill and energy, without especial difficulties from the elements, a sloop of war lodged her stout timbers on the shoals, some fifteen miles it is believed from the capes. There they are likely to remain, a beacon to the future navigator. A previous effort of Captain Thorne, in the service of the Pacific Company, had succeeded, in March, 1811, with great difficulty and the loss of three men. The whole course of the river is minutely described by Lewis and Clarke, as it was traversed by them forty years ago. It has not since shifted its rocky bed, or levelled the precipices which confine its waters. These intrepid travellers reached the ocean by means of portages round the more

difficult places, where the river would have afforded them a precarious means of transportation.

Such are some of the features of a country for which you are going to war, of choice and in preference to other means of acquisition! Small portions of it comparatively are represented as fit for cultivation; its great surface covered, as you have been told, with "antres vast, and deserts idle." Might not the description have been carried out, with "the cannibals that each other eat?" Captain Clarke met with a tribe, he says; among the most amiable he had seen, called the Chopunnish, one of whose chiefs wore a tippet of human scalps, decorated with the thumbs and fingers of those whom he had slain. One of the last published letters on the subject of Oregon describes a party of travellers from the Willamette valley as having been robbed by a band of Pawnees of a sum of money, and one of the party as having been injured by their war clubs. To indemnify him for his pecuniary loss, a bill has actually been reported to the Senate, and is now awaiting the action of that body. It is curious how well the description given in Koch's "*Traité de Paix*," in connexion with the treaty of the Escurial of 28th October, 1790, would fit the place and the circumstances of the present day.\* Where is this desired coast in relation to the rest of the world? A broad surface of nine thousand miles of ocean lies between it and its Asiatic neighbor; and nearly in mid-ocean rise the Sandwich islands, at the distance of 720 marine leagues, and the Marquesas distant by two hundred more. With the aid of the trade winds the outward voyage could be performed by traversing something like eleven thousand miles. Inward, no such assistance would be found, and the voyage would be much longer.

Thus separated from the rest of the world, and thrown upon its own resources, Oregon will probably be found any thing but prolific in the production of them. Whatever may be its future fitness for pasture grounds, the animals heretofore sustained have not been such as produce their annual and returning supplies, in renewed and multiplied extent—but those which, furnishing for a while their quota of comforts to civilized society with their lives, must soon altogether perish, and leave behind them a more hopeless wilderness. Maize and corn have not succeeded, unless in very limited spots. Nothing in the distance from the ocean is to be gratified except a love of adventure, and the wild excitements of a prolonged condition of what is usually the first stage of society.

After an arduous struggle, may not this battle field remain an inaccessible object to both contending parties? Or if attained, through strife, by either, with all of the consequences of bitterness that strife entails, may it not be a possession to be maintained with trouble, as it will have been hardly won? Then will these two nations, of boasted intelligence, and kindred language, literature, laws, and blood, lie panting and exhausted and bleeding, from their abortive efforts, like the clowns in the fable, who fought for the stars and the blue sky as cattle and pasture, mortified, ashamed, and punished for the mutual folly that had led them to battle.

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\* Quelques hangars construits sur une côte inhospitalière située au 50e degré latitude nord au-dessus de la presqu'île de Californie, et un misérable bastion défendu par des pierres, manquèrent d'exciter une guerre sanglante entre deux grandes puissances Européennes, et donnèrent naissance à une négociation qui fixa pendant quelques mois l'attention de toutes les puissances maritimes de l'Europe." (4 De Koch, ch. XXIV.)



The alleged circumstances upon which the respective claims of the two Governments rest are sufficiently well understood to authorize an application to them of principles of law. In this appeal to sound legal principles, facts not absolutely free from doubt may safely be assumed, without farther acquiescence in them than may be necessary for the sake of the argument. Some of them are so remote in their origin as to have become obscure from length of time; and others are so imperfectly proved as to be rendered doubtful by the want of evidence. In proportion to the darkness of our path should be the caution with which as travellers we tread in it. Fortunately, there is in every controversy a fair and honorable means of settlement, either in the ascertainment of right and wrong, by the aid of reason, or, where the scales of justice are so nicely poised that there ought to be no preponderance, a result equally satisfactory may be found in mutual forbearance, concession, and compromise.

It is not necessary to enter the lists prepared for very serious conflict with a claim to "clear and unquestionable title" on the part of Great Britain. Such pretension has never been made, unless it be quite recently, and then in responsive echo to the cry from high places here. Negotiators on the other side have either disavowed or omitted to assert a claim to title, in the strict sense of the term. They have been contented to question our loftier pretensions in this particular, to assert for themselves equal rights, to measure by a standard short of absolute perfection our claims, and to compare them with their own. Although claiming the merit of early discoveries by Sir Francis Drake in the sixteenth century, they can scarcely fail to admit that the absence of effective settlements for two hundred years would open the way to other Governments to advance and maintain supervening rights.

In the statement already referred to of Messrs. Huskisson and Addington, in the negotiation of 1826'-27, it is said: "It only remains for Great Britain to maintain and uphold the qualified rights which she now possesses over the whole of the territory in question. These rights are recorded and defined in the convention of Nootka. They embrace the right to navigate the waters of those countries, the right to settle in and over any part of them, and the right freely to trade with the inhabitants and occupiers of the same. These rights have been peaceably exercised ever since the date of that convention—that is, for a period of near forty years. Under that convention, valuable British interests have grown up in those countries. It is fully admitted that the United States possess the same rights, although they have been exercised by them only in a single instance, and have not since the year 1813 been exercised at all. But beyond these rights they possess none." (Greenhow's Proofs and Illustrations, pages 444, 445.)

The plenipotentiaries might have added, if it had been to the point then in view, a farther assertion of rights according to the Nootka convention. "The buildings and *tracts of land* situated on the northwest coast of North America, or on the islands adjacent to that continent, of which the subjects of His Britannic Majesty were *dispossessed* about the month of April, 1789, by a Spanish officer, shall be restored to the said British subjects." (1st article treaty of the Escorial, October 28, 1790—Greenhow's Proofs and Illustrations, page 476.)

Article 2d provides, that "in case any of the said respective subjects shall, since the same period, have been forcibly dispossessed of their lands,



&c., they shall be re-established in the possession thereof, or a just compensation shall be made," &c.

These articles, the application of which will be seen in a moment, are disregarded in our confident discussions, diplomatic and parliamentary. I am constrained to bring them to a reluctant notice.

In ascertaining the precise character of British rights, the point has been properly enough made, whether that nation ever had possession of any land at Nootka sound. One would have thought that the acknowledgments in the treaty, of *dispossession by force*, and the stipulations of the treaty for a *re-establishment in possession*, were pregnant proofs of the fact of *previous possession*, or at least of acknowledgment by a previous owner, which would be good against that owner, and against all claiming under him. For the purpose of the argument, it would matter little whether that possession preceded or followed the treaty—caused the treaty, or was caused by it. Did it exist? Elaborate arguments have been submitted here, the bent and purpose of which are to prove the negative. Authorities, some of them already well collected and introduced in the same order by Mr. Greenhow, (pages 257, 258,) are vouched to sustain the argument.

I will not dwell upon the insufficient character and sources of the assertions which have been vouched, although it would go far to affect the validity of them. "A Captain Broughton" sending an officer into the Cove for intelligence, who, with the use, perhaps, of his telescope, discovered, as he thought, that the former Spanish settlement was occupied by an Indian village! Rather imperfect *view*, as the lawyers would term it, for the foundation of title, or for the destruction of title! Segur's Historical Works are among the most agreeable productions of his day, but they are not always authentic pieces of evidence. The "Political picture" which is quoted may be as much of a fancy sketch as some portions of the Campaign in Russia are said to be. Neither Segur's Works nor Belsham's partisan History are satisfactory proofs, especially of events not bearing on the great political events which they profess to record. The preparations for war resounded through several kingdoms of Europe. The treaty was dignified by a birth and baptism at the Escorial. Noblemen were its sponsors—Lord Fitzherbert on the one side, and Count Florida Blanca on the other. The scene and the persons of the drama were alike distinguished. An obscure act of redelivery of possession, nearly five years afterwards, at a remote corner of the globe—distant almost by its vast circumference—might well have escaped the attention of even more faithful historians. While gentlemen have been engaged in an unprofitable search for negative testimony, their researches have not led to any of a positive character. I am gratified in being able to accommodate them; and they will probably admit, as well from the appropriate department of knowledge in which it is found, as from its direct and affirmative nature, that it goes far to settle the particular question. It will account, too, for the Lieutenant Pierce of the marines, though by a somewhat distorted name. In the "*Traité de Paix entre les Puissances de l'Europe*," of M. de Koch, the facts are distinctly and fully related in the 24th chapter, which is devoted to the history of the "*traité de l'Escorial entre l'Espagne et la Grande Bretagne du 28 Octobre, 1790.*" "*L'exécution de la convention du 28 Octobre, 1790,*" (thus the author concludes his history of an eventful negotiation and its consequences, which prevented a bloody war between two great European Powers, and fixed for a period the attention of all the maritime Powers of Europe:)

"epronva, au reste, des difficultés qui la retarderent jusqu'en, 1795. Elles furent terminées le 23 Mars de cette année, sur les lieux mêmes, par le brigadier Espagnol Alava et le lieutenant Anglois Poara," (this is the desired Mr. Pierce,) "qui e'changèrent des déclarations dans le golfe de Nootka même: après que le fort Espagnol fut rasé, les Espagnols s'embarquèrent, et le pavillon Anglois y fut planté en signe de possession." The symbol and the act went together. They are in speeches and correspondence overlooked. This event, it will be observed, took place in March, 1795. The "very curious original Spanish manuscript found in the Library of Congress, and entitled "Confidential Instructions for the Kingdom of New Spain," drawn up by Count Gigédo," &c., is "dated June 30, 1794." Yet the gentleman from Indiana says, "We can hardly have anything more conclusive," as to an event that is not suggested to have occurred until some nine months afterwards. The whole error of the argument is one of chronology. The convention itself having taken place in the year 1790, its execution, which was merely delayed for between four and five years, is supposed never to have taken place. One of the passages quoted, however, declares that "a royal determination has been received for the abandonment of Nootka, to which service I have," says Gigédo, "in consequence of the death of the former commissioner, assigned *Brigadier Don Jose Manuel de Alava*," &c. Accordingly, Koch's valuable work tells us that on the 23d March, 1795, the difficulties were terminated on the spot "*par le brigadier Espagnol Alava*," the very officer appointed for the purpose by Count Gigédo on the 30th June, 1794, one week less than nine months previously. It is a most curious circumstance, that this authentic piece of history should be entirely unknown to Mr. Buchanan, who asserts that no sufficient evidence has been adduced, that either Nootka Sound or any other spot upon the coast was ever actually surrendered by Spain to Great Britain. The "curious manuscript" is noticed by Mr. Greenhow, as presented by General Tornel.

England thus shows a *possession*, small, indeed, and not perhaps intended for all the purposes of permanent residence; still settlement—occupancy—*pedis positio*—while it lasted; something more than mere preliminary or inchoate right, founded on discovery, and susceptible of being done away by non-user or neglect; in its history not unlike that of Astoria in relation to ourselves. Both were possessed, dispossessed, and by treaty restored, and afterwards neglected or abandoned. It would not be easy in any of these particulars to draw a distinction between them. In one respect Nootka has a decided advantage—that its rival colony of Astoria, previously to the act of dispossession by the Racoon sloop of war, 1st December, 1813, had been sold, with all its stores of peltries, to a chartered company of the capturing nation. This capture by Britons of British property was like the purchase from the condemned culprit of his body by the surgeon—a bite—because he was to be hanged in chains.

The fact of British possession at Nootka threatens no such evils as have been intimated. Look at your map. Mr. Greenhow's has not each separate degree marked, although the eye can sufficiently well discriminate its position. On Mofras's map every degree is numbered. Nootka is about midway between 49 and 50. The southern straits of Juan de Fuca, the great entrance to Admiralty Inlet, that capacious inlet itself, and all the appertaining waters, are south of Nootka. An arrangement upon the basis of 49° would secure to us the benefit of the whole of them.



If a possession at Nootka Sound gives a southern indication of British color of right as early as 1788 at least, (Greenhow, page 290,) the trading establishment of Simon Fraser, in 1806, on what is called "Fraser's Lake," in the 54th degree of latitude, and different posts, which in 1808 received the name of New Caledonia, in the same region, mark the position of no dissimilar claims to the north. The Nootka restoration derives additional importance from the fact that it was a recognition, by both Governments that were parties to it, of the original possession taken by John Meares, in 1788. This was several years after its discovery on the 9th August, 1774, under the parallel of  $49^{\circ} 30'$ , by Juan Perez, who gave it the name of Port San Lorenzo, which, four years afterwards, was changed by Captain Cook to *King George's*, or *Nootka Sound*. That original act of possession by Meares was at first perhaps equivocal, for two reasons: 1st, because Meares, though a British subject, sailed under Portuguese colors: 2dly, because his establishment may have been designed for a temporary and occasional purpose. The subsequent ratification by his Government takes away from it all ambiguity, identifies upon settled principles the sovereignty with the first proceeding, and gives something like permanency and definite effect to the whole. It is impossible to treat with disrespect so grave, so well authenticated, so available a transaction.

Connected with these important circumstances is the series of events of which Alexander Mackenzie was the author. Twice did he traverse this before unexplored region all the way to the ocean. His first expedition was in 1789, but was confined in its progress to the now Russian possessions. The second, in 1792-'93, thirteen or fourteen years before the parallel exploration of Lewis and Clarke, went directly through the disputed territory. The river which he floated down for two hundred and fifty miles (then called by the Indians the Tacoutehec-Tessee—at present, by every body, Fraser's river) has its mouth in the straits of Fuca, *near* to the forty-ninth degree of latitude, but below it half a degree by the blessing of Providence.

The two countries, England and America, rest their respective claims, for the most part, upon similar grounds. Each asserts for itself rediscovery, exploration, additional exploration, and formal, but partial, possession—and each must admit at least partial abandonment.

Nootka Sound, discovered by Juan Perez, August, 9, 1774, was occupied by John Meares in 1788. His vessels were seized, and himself, it would seem, dispossessed by the Spaniards in 1789, and possession fully restored or given to the British in 1795.

The Straits of Fuca were perhaps discovered by Juan de Fuca in 1592; rediscovered by Captain Berkeley, in the British ship *Imperial Eagle*, in 1787; and by John Meares in the following year; and completely surveyed by Vancouver and Broughton in 1792.

The Columbia river was discovered by Heceta, August 15, 1775, and named "Assumption Inlet," although the Mexican charts immediately called it Rio St. Roc. It was entered by Captain Gray, May 11, 1792, and was subsequently explored and surveyed to a much more considerable extent by Vancouver.

Astoria was established in 1811, under the auspices of Mr. Astor, but with a company composed principally of British subjects. On the 16th of October, 1813, all its establishments, furs, and stock in hand, were sold to the British Northwest Company, for about fifty-eight thousand dollars.



Captain Black, of the Raccoon, British sloop of war, took possession on the 1st of December, 1813. On the 6th of October, 1818, the joint commissioners on the part of Great Britain, in pursuance of the treaty of peace, declared that they restored, and Mr. Prevost declared that he accepted for the United States, the settlement of Fort George. Things were placed, by this formal act, in the *status ante bellum*.

Lewis and Clarke's explorations were long subsequent to those of Alexander Mackenzie; and they were so fairly undertaken, with the kind assistance of the diplomatic representatives of other nations, that an advantage over other nations could scarcely be claimed from them. Mr. Jefferson's instructions to Captain Lewis, his former private secretary, look to broader and more philanthropic objects. Such as they were, they were followed by no acts of occupation for about thirty years. The first of such transactions are believed to have occurred in the year 1834.

Mr. Buchanan is not quite sustained in the broad position assumed in his last letter, that this proceeding was "preparatory to the occupation of the territory by the United States;" nor is he entirely accurate in the assertion that Lewis and Clarke "first explored the Columbia from its sources to its mouth."

While the plenipotentiaries of Great Britain have disclaimed *title*, in the proper sense of the word, they have most pertinaciously insisted upon claim of right. Once and again has the attempt been made to argue and urge them to a relinquishment of that right, and as often has the attempt signally failed. If on our side the word *title* has been used, and with it strong epithets implying an absence of obscurity or question, the difference has arisen from a different application of terms to precisely one and the same thing. Our claims are derived from similar sources. Without quarrelling about words, we should rather look at the thing, and see how far these exclusive pretensions can be maintained.

The Spanish title, as it is called, might safely be left with what has been so well said by Mr. Gallatin. After an abandonment of more than a hundred and seventy years, it could not be regarded as of great value, unless resuscitated with an impulse more than equal to that of its early vigor. The country is greatly indebted to this experienced statesman for the letters he has recently published. His close connexion with the proceedings of a former day, on which nearly every thing must rest, his clear intellect and far reaching intelligence, have enabled him to shed valuable light from the bright sources of an unfading mind.

Refuge at last is taken in the alleged discovery of the Columbia river by Captain Gray. Admitting, for the sake of the argument, all that is claimed in point of fact for this nautical exploit, its priority, nationality, and design, the great obstacle remains—what is its *extent*? The answer is familiarly given. A discovery of the mouth of a river, we are constantly and confidently told, extends the right which that circumstance confers to the territory drained by its waters. A principle like this might possibly suit some of the rivers, as they are called, of the fine estuary which receives the waters of the Susquehanna. They are broad inlets half a dozen miles in length, and are merely borrowed from the bay. Possibly you might have found an inclination towards such a principle in some Dutch legend or Italian romance, where a greater prolongation is given by nature to the lazy Scheld or wandering Po. But to ascribe to a momentary looker-on of the inhospitable debouché of the Mississippi, or even the capacious gulf

which distinguishes the entrance of the Amazon, such extensive results, would be near akin to positive absurdity. It would only fall short of that Papal bull which, "*de nostra mera libertate*," drew a line from pole to pole in favor of their Most Catholic Majesties. Where would such indefinite extension end? From the main river you would ascend all its tributary streams, thence gaze with gloating appetite upon every mountain rill; and if, through the bases of the Stony mountains, some dark cavern sheds a modest drop from its obscure and benighted bed on the eastern side of the girdle of the great West, which finds its way to Oregon, this will embrace, by the same vague hypothesis, the *land* of the Missouri, the Mississippi, and all the rivers of the continent. Lawyer after lawyer has built his argument upon this bold assumption. As with the irregular pronunciation of certain ancient classical names, we might be bound to yield the principle to authority if it could be found. Where is it? Hidden in the recesses of the temple, with the mysterious worship of the Grand Lama of Thibet? Veiled, like the Prophet of Khorassan, to conceal his splendors from human vision? Written, like laws of the Roman tyrant, on lofty pillars, beyond the reach of human scrutiny?

"If," says the Secretary of State to the country and the world, "the discovery of the mouth of a river, followed up within reasonable time by the first exploration both of its main channels and its branches, and appropriated by the first settlements on its banks, do not constitute a title to the territory drained by its waters in the nations performing these acts, then the principles consecrated by the practice of civilized nations ever since the discovery of the new world must have lost their force. These principles were necessary to preserve the peace of the world."

I will not repeat the facts already stated, or ask for an interpretation of "reasonable time," "first exploration," and "first settlements," or submit to you the dilemma of a *draining* by Frazer's river about the same time, in seeking to support what are called principles consecrated ever since the discovery of the new world. If there exist for particular objects, and between particular Powers, occasional *treaties* with new clauses in them, those are voluntary acts, the influence of which begins and ends with the high contracting parties who made them. If there be such a *principle*—a SACRED principle, necessary for the peace of nations, time-honored by the lapse of three hundred and fifty-four years, according to the minute computation of the Secretary, why has it escaped an authentic place in the records of a science which had no existence until after the discovery of the new world, towards the close of the fifteenth century? Grotius, the father of the law of nations, wrote and died in the seventeenth century. Puffendorf was born in the year 1631. Barbeyrac lived and died in the eighteenth century, and Vattel's first edition was published within less than ninety years from the present day, and the last in the year 1844. His work is deservedly held in the highest esteem. It exhibits, however, no trace of the doctrine assumed by you. On the contrary, such a pretension, by which a nation would engross, as I maintain, a wilderness, or, as Vattel says, a much greater extent of territory than it is able to people or cultivate, would be "*an absolute infringement of the natural rights of men, and repugnant to the views of nature.*" Remember how extensive are the fields over which your aspiring claims would run. The bull's hide which was made to cover the circumference of Carthage would be a pigmy illustration. A difficult and dangerous





entrance, almost imperceptible to the eye, and almost inaccessible to the boldest keel, gives, it is said, initiate rights to a "region," "territory," an "entire region"—in other words, to a country and a world. Will not such extravagant attempts expose us to just complaints for an overweening ambition, and tend to give support to charges which have been already brought against us? One gentleman has extended his colossal arms beyond the arctic circle. Another, delighted with the capacious maw of his fat hero—the happy emblem of "masterly inactivity" on the plains of Shrewsbury—desires to swallow up the universe. The Scythian ambassadors said to Alexander, "If your person were as gigantic as your desires, the world would not contain you. With your right hand you would touch the east, and with your left the west, at the same time. From Europe you would lay hold on Asia, and from Asia you would seize Europe; and when at last you had conquered all mankind, you would wage war with stones and trees, with rivers and wild beasts, and attempt to subdue nature."

Another description of title has been more than once relied on. Without arrogating any great pretensions to knowledge of the law, in any of its varied regions, I confess myself profoundly unacquainted with the laws of *destiny*. It has no laws; it never had them. It was in the dark forebodings of an ancient mythology supposed to be the inexplicable doom of men and nations. Blind and ignorant at all times, its decrees were for the most part cruel and wicked. Side by side with the Furies, Alecto and her hateful sisters, the Fates dispensed gifts and sufferings with indiscriminating hand. They appeared again in the halls of Odin, administering draughts of blood in cups of human skulls. They yielded to the benignant providence of a better fate; and have been occasionally revived in a national assembly, under the assumed garb of a Goddess of Reason, or in another hemisphere seated in the car of Juggernaut. Never may they find altars or votaries in the halls of American legislation.

While investigating the merits of disputed questions, it should be our first endeavor to prevent interest and passion from inducing us to deceive ourselves. We have rights in Oregon—rights which, at every hazard, must be upheld. But it is not by giving to them a name or a character beyond their true deserts that in their integrity they are to be maintained.